

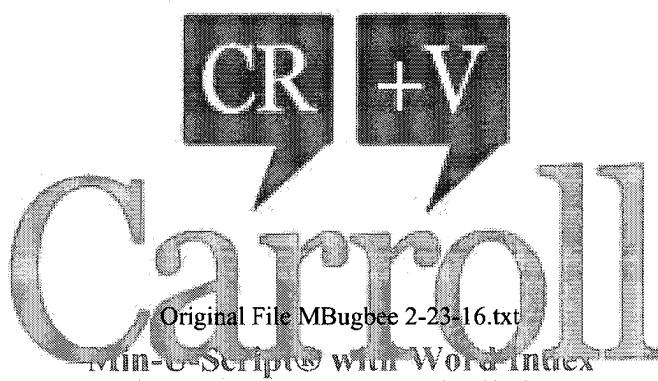
EXHIBIT 2

In The Matter Of:

*Alan Thibault v.
Edward Wierszewski*

*Marty Bugbee
February 23, 2016*

*Carroll Court Reporting and Video
175 Cass Avenue
Mt. Clemens, MI 48043*



Court Reporting and Video

Alan Thibault v.
Edward Wierszewski

Marty Bugbee
February 23, 2016

Page 1			BUGBEE	Page 3
1	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION		1	Southfield, MI
2			2	Tuesday, February 23, 2016
3	ALAN THIBAULT,		3	
4	Plaintiff,		4	* * *
5	vs. Case No. 2:15-cv-11358		5	
6	EDWARD WIERSZEWSKI, individually and in his official capacity as a		6	M A R T Y B U G B E E ,
7	Public Safety Officer,		7	after having been first duly sworn to tell the
8	Defendant.		8	truth, the whole truth and nothing but the truth,
9			9	was examined and testified as follows:
10	DEPONENT: MARTY BUGBEE DATE: Tuesday, February 23, 2016 TIME: 10:45 a.m. LOCATION: 26700 Lahser Road Southfield, MI REPORTER: Nikki Hatz, CSR-2377		10	EXAMINATION
11	APPEARANCES:		11	BY MR. DEGROOD:
12	MR. SOLOMON RADNER 1-800-Law-Firm 26700 Lahser Road Suite 400 Southfield, MI 48033 248-291-9712		12	Q. Good morning. Would you state your full
13	Appearing on behalf of Plaintiff.		13	legal name for the record?
14	MR. GEORGE M. DEGROOD Thomas Degrood and Witenoff 400 Galleria Officentre Suite 550 Southfield, MI 48034 248-353-4450		14	A. My name is Marty George Bugbee. Spelling:
15	Appearing on behalf of Defendant.		15	M-a-r-t-y. G-e-o-r-g-e. B-u-g-b-e-e.
16			16	Q. Mr. Bugbee, my name is George DeGrood. I
17			17	represent the defendants in this lawsuit that was
18			18	commenced against them on behalf of Mr. Alan Thibault.
19			19	MR. DEGROOD: The deposition is being
20			20	taken pursuant to Notice and pursuant to the
21			21	Michigan, the actual Federal Rules of Evidence and
22			22	the Federal Rules of Civil Procedure.
23			23	Q. Could you please give me your residential
24			24	address.
25			25	A. 1380 Larkmoor Boulevard. L-a-r-k-m-o-o-r.
Page 2			BUGBEE	Page 4
1			1	Boulevard. Berkley, Michigan 48073.
2			2	(Deposition Exhibit No. 1 marked for
3	WITNESS:		3	identification.)
4	MARTY BUGBEE		4	Q. Mr. Bugbee, I'm going to hand to you what has
5	Examination by Mr. Degrood	3	5	been marked as Deposition Exhibit No. 1. For the record
6	Examination by Mr. Radner	85	6	could you please identify what this is.
7			7	A. This is my curriculum vitae.
8			8	Q. Would you agree it's two pages long?
9			9	A. Yes.
10	NUMBER	EXHIBITS	10	Q. There's nothing in your C.V. that has any
11	Exhibit No. 1	IDENTIFICATION	11	type of fee schedule with respect to any of the efforts
12	Exhibit No. 2	Curriculum Vitae	12	that you might provide to individuals who hire you for
13	Exhibit No. 3	Photocopy of CD	13	your services. True?
14	Exhibit No. 4	Training Course Reference	14	A. Yes, sir. That is true.
15	Exhibit No. 5	Deposit Slip	15	Q. Yesterday on February 22nd, 2016, you
16	Exhibit No. 6	National Weather Service Temps	16	forwarded to my office a request that indicated that I
17	Exhibit No. 7	Handwritten Notes/NHTSA review	17	17 would need to have a check in the amount of \$700 for a
18	Exhibit No. 8	9 pages	18	18 minimum of a four hour appearance fee for your deposition
19	Exhibit No. 9	Handwritten Notes/Videotape	19	19 today. Correct?
20		Review/30 pages	20	A. Correct.
21		17 Page Police Report	21	Q. Have I so far given you the 700 check?
22			22	A. Yes, you have, sir.
23			23	Q. Your hourly fee is identified as \$175 per
24			24	hour. My question to you is: Is that the fee, 175 per
25			25	hour, that you charge for review as well as for

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 5	BUGBEE	Page 7
<p>1 testifying in court?</p> <p>2 A. Yes.</p> <p>3 Q. Should it be necessary for you to proceed to</p> <p>4 court, do you also do a four hour minimum or do you go by</p> <p>5 straight hourly rate?</p> <p>6 A. It would be by straight hourly rate.</p> <p>7 Q. It appears to me in my review of Exhibit 1</p> <p>8 that for the majority of your adult life you were</p> <p>9 employed by the State of Michigan as a Michigan State</p> <p>10 Police Trooper?</p> <p>11 A. That is correct.</p> <p>12 Q. That began in April of 1989?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And you retired from the Michigan State</p> <p>15 Police in April of 2011?</p> <p>16 A. That's correct.</p> <p>17 Q. What was your rank at the time of your</p> <p>18 retirement from the Michigan State Police?</p> <p>19 A. I was a Detective First Lieutenant.</p> <p>20 Q. At what location or post were you working</p> <p>21 when you last worked for the State Police?</p> <p>22 A. I was the Commander of the Information</p> <p>23 Sharing Environment Section and that was located at the</p> <p>24 Hidta: H-i-d-t-a, Hidta Office in downtown Detroit.</p> <p>25 Q. Is that in the New Center area?</p>		<p>1 Q. Now as I understand a Field Training</p> <p>2 Officer's role, as it existed when you were at both the</p> <p>3 Plymouth Township and Michigan State Police, that was</p> <p>4 pretty much hands on experience with respect to -- I'll</p> <p>5 use the term rookie or a new hire in the agency.</p> <p>6 Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So they would in essence ride along with you</p> <p>9 if you were doing road patrol and looking for possible</p> <p>10 individuals who were violating traffic laws?</p> <p>11 A. Yes.</p> <p>12 Q. And you would perhaps point out to them a</p> <p>13 situation and perhaps quiz them, etcetera, to make sure</p> <p>14 that they fully understood the law and were capable of</p> <p>15 applying same to given circumstances?</p> <p>16 A. No. It's a little more complex than that.</p> <p>17 Q. Well, did you ever sit down with your Field</p> <p>18 Training Officers with respect to teaching any field</p> <p>19 sobriety testing with any course textbook or anything of</p> <p>20 that nature? Yes or no.</p> <p>21 A. Yes.</p> <p>22 Q. What textbook would you have used?</p> <p>23 A. It would have been the Field Training Manual.</p> <p>24 Q. For the State Police?</p> <p>25 A. No. For the Plymouth Township Police</p>	
BUGBEE	Page 6	BUGBEE	Page 8
<p>1 A. Yes, sir. That's near Grand Circus Park,</p> <p>2 right near the Tiger Stadium, Comerica Park.</p> <p>3 Q. Now it indicates -- strike that.</p> <p>4 Have you ever been certified as a</p> <p>5 standard sobriety field test expert: Yes or no?</p> <p>6 A. Yes.</p> <p>7 Q. When were you so certified as an instructor</p> <p>8 for standard field sobriety testing?</p> <p>9 A. You say expert or instructor?</p> <p>10 Q. As an instructor.</p> <p>11 A. I was a Field Training Officer with the</p> <p>12 Michigan State Police, as well as with other the police</p> <p>13 department prior to Michigan State Police. And in that</p> <p>14 capacity I instructed other officers and troopers on</p> <p>15 field sobriety testing and the arrest process for alcohol</p> <p>16 enforcement.</p> <p>17 Q. The prior law enforcement agency that you</p> <p>18 worked with before joining the State Police was what</p> <p>19 agency?</p> <p>20 A. I was a police officer with Chesterfield</p> <p>21 Township Police Department. I graduated from the Macomb</p> <p>22 Police Academy in 1985. I worked there on a part time</p> <p>23 for several months. Then I went to the Plymouth Township</p> <p>24 Police Department, where I worked from '85 to '89. There</p> <p>25 I served as a Field Training Officer.</p>		<p>1 Department and then also the Michigan State Police.</p> <p>2 Q. Now I see a fair amount of materials in front</p> <p>3 of you and did you bring materials in response to the</p> <p>4 Notice to Produce that was attached?</p> <p>5 A. Yes, I did.</p> <p>6 Q. What did you bring with you; what materials?</p> <p>7 A. Well, I brought a disk that I burned for you</p> <p>8 that contains the National Highway Transportation Safety</p> <p>9 Administration manuals for three different levels of</p> <p>10 alcohol enforcement. One being the DUI or DWI Detection</p> <p>11 Manual for Standard Field Sobriety Testing. The other</p> <p>12 manual being the Advanced Alcohol Enforcement Manual and</p> <p>13 the third manual that is on here is the Drug Recognition</p> <p>14 Expert Manual.</p> <p>15 Q. All right.</p> <p>16 A. Also other resources. Just some</p> <p>17 correspondences and some --</p> <p>18 Q. Let me just stick with the first one here.</p> <p>19 MR. DEGROOD: We'll mark this as</p> <p>20 Exhibit 2, please.</p> <p>21 (Deposition Exhibit No. 2 marked for</p> <p>22 identification.)</p> <p>23 Q. Mr. Bugbee, with respect to Exhibit No. 2, do</p> <p>24 you have an index somewhere as to what is on here or were</p> <p>25 you testifying from memory?</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 9	BUGBEE	Page 11
1 A. Testifying from memory.		1 A. Possibly.	
2 Q. With respect to the first manual that you		2 Q. What about the other two manuals, the NHTSA	
3 identified, what was that again?		3 manual, when did you last review that?	
4 A. That was the DWI Detection Manual. That's		4 A. I don't recall when that was either.	
5 just my memory of what the title was. It's not specific.		5 Q. More likely than not when you were still	
6 Q. What edition was that?		6 engaged as an officer with the Michigan State Police?	
7 A. Don't know.		7 A. Possibly.	
8 Q. What was the second manual?		8 Q. What about with the DWI Detection Manual,	
9 A. That was the -- I would like to look at my --		9 same question. When did you last utilize that?	
10 Q. Go ahead. You can pull out your notes,		10 A. I don't recall that either.	
11 whatever.		11 Q. Probably when you were still working at the	
12 MR. RADNER: If you like, I can turn		12 State Police?	
13 my laptop on and we can all look together at it.		13 A. Possibly.	
14 That's why I brought my laptop.		14 Q. Would I be correct that at no time since	
15 MR. DEGROOD: That's okay. I can't		15 retiring from the Michigan State Police in April of 2011,	
16 read electrons.		16 were you involved in any type of traffic stops of	
17 A. The second manual is the Advanced Roadside		17 citizens on the roadway suspected of either erratic	
18 Impaired Driving Enforcement Manual.		18 driving or operating under the influence?	
19 Q. What edition was that?		19 A. That's correct.	
20 A. R5 slash 13 edition.		20 Q. So with respect to the date of December 5th,	
21 Q. What was the third manual on that?		21 2014, you were not actively engaged in any type of	
22 A. The third manual is the training manual.		22 traffic stops for any law enforcement agencies. Correct?	
23 It's a NHTSA manual, NHTSA being: National Highway		23 A. That's correct.	
24 Transportation Safety Administration Manual, training		24 Q. Would I also be correct that in December of	
25 manual for DRE.		25 2014, you were no longer engaged in field training	
BUGBEE	Page 10	BUGBEE	Page 12
1 Q. What edition was that?		1 exercises as a field training officer?	
2 A. Don't know off the top of my head.		2 A. That's correct.	
3 Q. Were any of these manuals the manuals that		3 Q. Would your activities as a field training	
4 you procured from Michigan State Police Sergeant Perry		4 officer have ceased when you retired in April of 2011,	
5 Curtis within the past two or three weeks?		5 from the Michigan State Police?	
6 A. Perry Curtis. I didn't speak to a Perry		6 A. That's correct.	
7 Curtis.		7 Q. Would I be correct that at no time have you	
8 Q. Did you procure any of those manuals from the		8 ever participated in a lecture as part of instruction in	
9 Michigan State Police within the last two or three weeks?		9 field sobriety tests?	
10 A. I procured the Standard Field Sobriety Test		10 A. Participated in as in?	
11 Manual, the first one.		11 Q. As a lecturer to a group of individuals who	
12 Q. When did you procure that?		12 were undergoing training?	
13 A. It would have been within the last two weeks.		13 A. No. I have not done that.	
14 Q. From where did you procure it?		14 Q. Now you indicated that you also had the DRE	
15 A. Directly from Detective or -- excuse me.		15 Manual?	
16 From First Lieutenant James Flegal.		16 A. Correct.	
17 Q. James and his last name?		17 Q. When did you first receive a copy of a DRE	
18 A. James Flegal: F-l-e-g-a-l. He's the Section		18 Manual?	
19 Commander for Traffic Services Division.		19 A. I don't recall when I first looked at one.	
20 Q. Before procuring that manual from Sergeant		20 Q. Was it in connection with your review of this	
21 Flegal when is the last time that you had reviewed that		21 case?	
22 manual from today going backwards?		22 A. That was the last time I looked at it. I	
23 A. I don't recall.		23 don't recall prior to that when I looked at one.	
24 Q. Would it have been when you were still		24 Q. Is it possible that the first time that you	
25 employed as a Michigan State Police Officer?		25 saw a DRE Manual was as a result of your participation in	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 13	BUGBEE	Page 15
1 this lawsuit?		1 too or I would tell you.	
2 A. No. I believe I have reviewed one in the		2 MR. DEGROOD: That guy's name you	
3 past.		3 mean?	
4 Q. Am I correct that you are not a -- when you		4 MR. RADNER: Yes.	
5 use the term DRE, what are you referring to?		5 MR. DEGROOD: It was a gal actually	
6 A. Drug Recognition Expert.		6 and you forgot that conveniently.	
7 Q. Have you ever taught the DRE curriculum?		7 MR. RADNER: It was a girl you said?	
8 A. No, I have not.		8 Q. Would I be correct that nowhere in Exhibit 1	
9 Q. Have you ever been certified to teach the DRE		9 do you indicate that you hold yourself out as an expert	
10 curriculum?		10 in standard field sobriety testing?	
11 A. No, I have not.		11 A. That's correct.	
12 Q. Have you ever participated as a student in		12 Q. As you use the term standard field sobriety	
13 the DRE curriculum?		13 testing, what does that mean to you?	
14 A. No, I have not.		14 A. Well, that means you're trained in the	
15 Q. So you have never been trained and do not		15 capability to detect driving behaviors that could	
16 hold yourself out as a drug recognition expert. Correct?		16 indicate intoxication. Trained in collecting	
17 A. Correct.		17 observations of drivers from direct contact. Conducting	
18 Q. Now as a result of your involvement in this		18 standardized testing to determine probable cause to make	
19 lawsuit -- and by the way, when were you first contacted		19 arrests for driving under the influence of alcohol or	
20 to consider becoming engaged in this matter?		20 drugs.	
21 A. It would have been I think three weeks ago.		21 Q. With respect to the three manuals that you	
22 Q. Since being retained approximately three		22 have reproduced on Exhibit No. 2, can you tell me with	
23 weeks ago in this matter, have you kept a log of the		23 respect to any of those manuals which if any sections of	
24 amount of time that you have spent in your endeavors?		24 those manuals were reviewed by you in formulating any	
25 A. No, I haven't.		25 opinions you might be rendering here today?	
BUGBEE	Page 14	BUGBEE	Page 16
1 Q. When you were first contacted, by whom were		1 A. I reviewed each manual and every page over	
2 you first contacted approximately three weeks ago?		2 the weekend.	
3 A. I was contacted by Solomon Radner.		3 Q. Do you have any recollection how long that	
4 Q. Had you ever provided any review services for		4 took to review every page of those three manuals?	
5 purposes of rendering any type of opinions for Mr. Radner		5 A. Most of the weekend. I didn't log the time.	
6 in any cases prior to your involvement in this one?		6 Q. How are you being paid for your services by	
7 A. No, I have not.		7 Mr. Radner; by the hour?	
8 Q. How about with respect to Mr. Radner's law		8 A. Flat fee.	
9 firm, 1-800-Law-Firm, have you ever been retained by the		9 Q. A flat fee?	
10 firm to participate in providing review and/or opinions		10 A. Yes.	
11 with respect to any type of police work besides this		11 Q. What is that flat fee?	
12 case?		12 A. I provided a deposit slip indicating that in	
13 A. No, I have not.		13 my discovery to you. It's \$2,000.	
14 Q. Do you in some fashion advertise your		14 Q. All right. So no matter if it takes one hour	
15 availability to provide opinions concerning police		15 or 60 hours it's a flat fee of \$2,000 for Mr. Radner.	
16 activities?		16 Correct?	
17 A. No.		17 A. Correct.	
18 Q. Do you have any idea how Mr. Radner		18 Q. Would that be the basis upon which you have	
19 discovered your availability?		19 failed to complete a log as to the time that you have	
20 A. I believe it was through word of mouth.		20 invested in this matter?	
21 Q. Word of mouth regarding who?		21 A. Tracking time didn't matter. No.	
22 A. I don't know who he spoke to but he contacted		22 Q. So you're not keeping track of time at all.	
23 me and said he had talked to somebody who said to talk to		23 It doesn't matter?	
24 me.		24 A. No.	
25 MR. RADNER: I forgot that guy's name		25 Q. How do you ever determine whether or not you	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 17	BUGBEE	Page 19
<p>1 have made money, broke even or lost money with respect to 2 the time and efforts put into your review process?</p> <p>3 A. I don't.</p> <p>4 Q. Have you testified in open court with respect 5 to opinions of constitutional violations by police 6 officers?</p> <p>7 A. No.</p> <p>8 Q. Have you testified in open court as an expert 9 witness?</p> <p>10 A. As a police officer, yes.</p> <p>11 Q. When you were still employed by Michigan 12 State Police?</p> <p>13 A. Right. Right.</p> <p>14 Q. Since retiring from the Michigan State 15 Police, have you testified in open court as an individual 16 rendering opinions critical of police officers?</p> <p>17 A. No, I have not.</p> <p>18 Q. Have you at any time testified in open court 19 as an individual offering opinions substantiating the 20 activities of police officers who are being sued for 21 alleged wrongdoings?</p> <p>22 A. No, I have not.</p> <p>23 Q. So just so I'm clear. At no time since your 24 retirement from Michigan State Police have you testified 25 in any court in the State of Michigan, state court or</p>		<p>1 A. It's for the training courses that are 2 offered by Michigan State Police in regard to alcohol 3 enforcement, the different stages of training. It was 4 just a reference that I had reviewed pursuant to your 5 Discovery Order. I produced that as well because I had 6 read it through the weekend.</p> <p>7 Q. Let's mark that Exhibit No. 3. Before you 8 mark Exhibit No. 3.</p> <p>9 To your independent knowledge and 10 recollection at the time of your retirement from the 11 Michigan State Police, was there a drug recognition expert 12 program available to officers in Michigan?</p> <p>13 A. I don't recall. I don't.</p> <p>14 MR. RADNER: What was Exhibit 3?</p> <p>15 Q. You don't recall or you don't know?</p> <p>16 A. I don't know if there was or not. I don't 17 recall if I knew that at the time.</p> <p>18 Q. Okay.</p> <p>19 MR. DEGROOD: We'll now mark this as 20 Exhibit 3.</p> <p>21 (Deposition Exhibit No. 3 marked for 22 identification.)</p> <p>23 Q. What is the next item that you brought with 24 you?</p> <p>25 A. The next item is what I had mentioned</p>	
BUGBEE	Page 18	BUGBEE	Page 20
<p>1 federal court?</p> <p>2 A. Correct.</p> <p>3 Q. Have you testified in any other states?</p> <p>4 A. No.</p> <p>5 MR. RADNER: Just so we're clear. 6 I'm just going to make a little objection here that 7 you kind of went back from or you switched from 8 asking him only if he has been qualified as an 9 expert and asked questions for his opinions.</p> <p>10 Then you kind of wrapped that up with 11 a question of: You have never testified in any 12 state or federal court. I think that when he was 13 answering, he was answering as to the being 14 qualified as an expert for his opinions.</p> <p>15 MR. DEGROOD: Pardon me? What's your 16 objection?</p> <p>17 MR. RADNER: I stated it already.</p> <p>18 MR. DEGROOD: Sounded like a treatise 19 to me but that's okay.</p> <p>20 Q. What is the next item that you have brought 21 with you?</p> <p>22 A. Well, it was a description of the drug or the 23 training sequence for -- it was just a reference that I 24 looked at while I was reviewing things.</p> <p>25 Q. May I see that?</p>		<p>1 earlier. This is the deposit slip from the fee that I 2 received from Mr. Radner in regard to this case. I 3 received it on 1-26, 2016. I produced that in response 4 to your Court Order.</p> <p>5 Q. All right. Let's mark that as our next 6 Exhibit.</p> <p>7 (Deposition Exhibit No. 4 marked for 8 identification.)</p> <p>9 Q. When Mr. Radner first contacted you did he 10 meet with you or was it a telephone contact?</p> <p>11 A. Telephone contact.</p> <p>12 Q. What did you discuss with him during your 13 initial contact and when in proximity to the date of 14 1-26-16 of Exhibit 4 did that conversation first take 15 place?</p> <p>16 A. I think it was a day or two prior to that 17 1-26.</p> <p>18 Q. Do you remember how long the initial phone 19 call lasted?</p> <p>20 A. No, I don't.</p> <p>21 Q. Did you take notes of any of the information 22 that was imparted to you by Mr. Radner?</p> <p>23 A. No, I didn't.</p> <p>24 Q. Do you recall what it was that you discussed 25 with Mr. Radner at that time?</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 21	BUGBEE	Page 23
<p>1 A. He said he had heard that I could help him</p> <p>2 out on a case and wanted to know if I was interested.</p> <p>3 Q. All right.</p> <p>4 A. Gave me a brief description.</p> <p>5 Q. What was the brief description of the case</p> <p>6 that he gave you?</p> <p>7 A. It was an arrest that was made in Grosse</p> <p>8 Pointe Farms. As a result of the investigation the</p> <p>9 officer did there was no evidence in regard to chemical</p> <p>10 tests that supported the arrest and wanted to know if I</p> <p>11 could review the case for him.</p> <p>12 Q. Did you review the case?</p> <p>13 A. Yes, I did.</p> <p>14 Q. What materials from the case did you review?</p> <p>15 A. He provided me with the Complaint Report from</p> <p>16 Grosse Pointe Farms Police. Chemical tests. The</p> <p>17 chemical test rights form. Two videos; one of the arrest</p> <p>18 process and one of the booking process.</p> <p>19 Q. Anything else he provided you with?</p> <p>20 A. That's what I was given.</p> <p>21 Q. Anything else since that initial provision of</p> <p>22 these materials that you have been provided?</p> <p>23 A. No.</p> <p>24 Q. Just so I'm clear. You have not read the</p> <p>25 testimony given by Mr. Thibault at his deposition?</p>		<p>1 Farms' Answers to Request for Production of Documents?</p> <p>2 A. No.</p> <p>3 Q. Did you review any documents produced by</p> <p>4 Mr. Thibault?</p> <p>5 A. No.</p> <p>6 Q. I'm assuming but you tell me. Are you going</p> <p>7 to render opinions today --</p> <p>8 MR. DEGROOD: Off the record.</p> <p>9 (Brief recess.)</p> <p>10 MR. DEGROOD: Back on the record.</p> <p>11 (Record repeated by reporter.)</p> <p>12 Q. Are you prepared to render any opinions today</p> <p>13 critical of the City of Grosse Pointe Farms?</p> <p>14 A. Yes.</p> <p>15 Q. Are you prepared to render any opinions today</p> <p>16 critical of Officer Wierszewski?</p> <p>17 A. I'll render my observations and they can be</p> <p>18 interpreted as critical or not.</p> <p>19 Q. Excuse me?</p> <p>20 A. I'll render my observations and my opinion</p> <p>21 and they can be interpreted as critical or not.</p> <p>22 Q. Well, how do you interpret them? I would</p> <p>23 like to know if you're criticizing Officer Wierszewski?</p> <p>24 A. No. I think that's a harsh word. I think I</p> <p>25 will render my observations as to what I see.</p>	
BUGBEE	Page 22	BUGBEE	Page 24
<p>1 A. No.</p> <p>2 Q. That was taken in this very room when we</p> <p>3 didn't have the lights that we have available today?</p> <p>4 A. No, I did not.</p> <p>5 Q. Likewise, I'm assuming you didn't review</p> <p>6 Officer Wierszewski's deposition testimony?</p> <p>7 A. No, I did not.</p> <p>8 Q. Do you think that either the deposition</p> <p>9 testimony of Mr. Thibault or Mr. Wierszewski would be of</p> <p>10 importance to you to review prior to formulating</p> <p>11 opinions?</p> <p>12 A. No.</p> <p>13 Q. Did you review Mr. Thibault's Answers to</p> <p>14 Interrogatories?</p> <p>15 A. No.</p> <p>16 Q. Did you review Defendant Wierszewski's</p> <p>17 Answers to Interrogatories?</p> <p>18 A. No.</p> <p>19 Q. Did you review the City of Grosse Pointe</p> <p>20 Farms' Answers to Interrogatories?</p> <p>21 A. No.</p> <p>22 Q. Did you review Officer Wierszewski's Response</p> <p>23 to Request for Production of Documents?</p> <p>24 A. No.</p> <p>25 Q. Did you review the City of Grosse Pointe</p>		<p>1 Q. Well, let me ask you this. Do you believe</p> <p>2 that Officer Wierszewski at any time with his interaction</p> <p>3 with Mr. Thibault on December 5th, 2014, violated any</p> <p>4 standard of practice that a reasonable and prudent</p> <p>5 officer in like or similar circumstances with like and</p> <p>6 similar training of Officer Wierszewski?</p> <p>7 A. Yes.</p> <p>8 Q. What's the next item that you brought with</p> <p>9 you?</p> <p>10 A. This is something I referred to, as the</p> <p>11 temperature that day was a factor in what I reviewed. I</p> <p>12 researched the National Weather Service.</p> <p>13 Q. For what city?</p> <p>14 A. Temperature for that day. For Detroit.</p> <p>15 Q. Do you know if those temps are taken at Metro</p> <p>16 Airport?</p> <p>17 A. This is likely taken at DTX. That's Detroit</p> <p>18 City Airport.</p> <p>19 Q. How far was that from the stop?</p> <p>20 A. This is Detroit City. I'm a pilot so I'm</p> <p>21 familiar with this.</p> <p>22 Q. I understand. I read your C.V. But this</p> <p>23 case doesn't involve any flying, does it?</p> <p>24 A. I have a familiarity where City Airport is.</p> <p>25 I'm just qualifying my capability.</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 25	BUGBEE	Page 27
1 Q. How far was the City Airport from the stop?	2 A. 6 miles. 7 miles.	1 the field sobriety testing given to Mr. Thibault?	2 A. No.
3 Q. 7 miles?	4 A. Yeah.	3 Q. Do you have any plans today or from today	4 forward to review Officer Wierszewski's deposition
5 Q. What was the temperature at City Airport at	6 around two in the morning?	5 testimony?	6 A. I have not been asked to or directed by
7 A. It doesn't say. It says a minimum	8 temperature and a maximum temperature and an average	7 Counsel to do so and I don't have plans.	8 Q. Same question with respect to Mr. Thibault.
9 temperature.	10 Q. Of what significance was the temperatures	9 A. I don't plan on that either.	10 MR. DEGROOD: I'm going to reserve
11 with respect to your formulation of opinions?	12 A. Mr. Thibault said he was chilly.	11 the right to again examine Mr. Bugbee should there	12 come a point in time that he does review those
13 Q. Pardon me?	14 A. Mr. Thibault said he was chilly. He didn't	13 materials for purposes of formulating or adding to	14 any of his opinions.
15 have a coat on. One of the observations for -- one of	16 the pre-arrest observations that Officer Wierszewski made	15 I don't think we marked the	16 temperature. Let's do that next as No. 5.
17 was that he kept rubbing his hands and moving his feet up	18 and down.	17 (Deposition Exhibit No. 5 marked for	18 identification.)
19 Q. Did you observe the videotape that recorded	20 the activities of the traffic stop at the scene where	19 Q. What's the next item that you brought with	20 you today?
21 Mr. Thibault rolled his sleeves up as he was walking back	22 to the police cruiser at the direction of Officer	21 A. Those are my written notes that I took from	22 my most recent review of the second NHTSA manual that I
23 Wierszewski?	24 A. Yes.	23 had mentioned that are in discovery. Those were prepared	24 over the weekend.
25 Q. Do you think that may have had any role to		25 Q. May I see those, please.	
BUGBEE	Page 26	BUGBEE	Page 28
1 play in his being chilly?	2 A. Potentially.	1 MR. DEGROOD: Let's do those.	2 (Deposition Exhibit No. 6 marked for
3 Q. Do you agree that if indeed the evidence in	4 this case indicates that Mr. Thibault was in the cab of a	3 identification.)	4 Q. With respect to your notes of Exhibit No. 6,
5 semi-tractor with the heater on at the time of exiting	6 from the cab of that tractor, that more likely than not	5 you have indicated on the first page: Notes pertaining	5 you have indicated on the first page: Notes pertaining
7 he was not impacted by the chilliness, if you will?	8 A. I don't know.	6 to a phase one. On the second page, notes related to a	6 to a phase one. On the second page, notes related to a
9 Q. So that's a gray area with respect to	10 formulating your opinion. Correct?	7 phase two, which continue on to page three. And on page	7 phase two, which continue on to page three. And on page
11 A. I don't know how he felt, no.	12 Q. You would agree that when it comes to	8 four a phase three, which is four, five, six, seven. And	8 four a phase three, which is four, five, six, seven. And
13 standard field sobriety testing, while the individuals	14 learning said techniques are taught same under ideal	9 then a validation of SFST at page eight and then	9 then a validation of SFST at page eight and then
15 conditions, that when officers actually enter the field,	16 there are times that less than ideal conditions exist	10 standardized WAT on page nine in one leg stand.	10 standardized WAT on page nine in one leg stand.
17 with respect to administering those field sobriety tests.	18 Correct?	11 It's my understanding that when NHTSA	11 It's my understanding that when NHTSA
19 A. Correct. And those conditions need to be	20 taken into consideration as to the interpretation of	12 explains the standardized field sobriety test that it breaks	12 explains the standardized field sobriety test that it breaks
21 their weight.	22 Q. Do you have any evidence one way or the other	13 it into a three phase study, the first being the initial	13 it into a three phase study, the first being the initial
23 that Officer Wierszewski did not take the temperature at	24 the time of the traffic stop into consideration with	14 observations of vehicle operation. Correct?	14 observations of vehicle operation. Correct?
25 respect to his performing and observing the response to		15 A. Correct.	15 A. Correct.
		16 Q. And you're not critical of Officer	16 Q. And you're not critical of Officer
		17 Wierszewski for stopping Mr. Thibault as a result of the	17 Wierszewski for stopping Mr. Thibault as a result of the
		18 erratic behavior -- those my terms -- of observing this	18 erratic behavior -- those my terms -- of observing this
		19 semi tractor-trailer being driven over a median island	19 semi tractor-trailer being driven over a median island
		20 separating the two directions of travel on Moross Avenue,	20 separating the two directions of travel on Moross Avenue,
		21 are you?	21 are you?
		22 A. No.	22 A. No.
		23 MR. RADNER: I want to just object	23 MR. RADNER: I want to just object
		24 that that question had a -- it was a very lengthy I	24 that that question had a -- it was a very lengthy I
		25 think at times vague question. To answer that with	25 think at times vague question. To answer that with

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 29	BUGBEE	Page 31
1 simply a yes or no I don't think is fair and 2 appropriate.		1 with respect to the observations of vehicle operation? 2 A. Can I refer to the copy of my notes? I have 3 my original.	
3 Q. Let me ask you this question as well. You 4 don't believe that Mr. Thibault's constitutional rights 5 were violated as a result of this traffic stop by Officer 6 Wierszewski, do you?		4 Q. You have your originals in there? 5 A. Yes.	
7 MR. RADNER: I'm going to object to 8 that as well that I don't believe he's qualified to 9 answer that question.		6 MR. RADNER: These notes have not yet 7 been marked, right?	
10 MR. DEGROOD: I think for many years 11 enforcing the laws, including the Constitution of 12 the State of Michigan, as well as the Constitution 13 of the United States, he may be capable of 14 answering that question. If at a subsequent point 15 in time you wish to file a Motion to strike his 16 opinion concerning that, that is obviously your 17 prerogative.		8 MR. DEGROOD: Yes. They're No. 6. 9 MR. RADNER: I thought he was 10 referring to the big stack of notes.	
18 Q. Do you remember the question, Mr. Bugbee?		11 A. I'm going to have to refer to the big stack 12 of notes.	
19 A. Yes. I don't know.		13 MR. DEGROOD: Let's mark the big 14 stack of notes. We'll mark that as Exhibit No. 7. 15 (Deposition Exhibit No. 7 marked for 16 identification.)	
20 Q. You don't know?		17 Q. I'm going to hand you what has been marked as 18 No. 7. What is that?	
21 A. I don't know.		19 A. This is my notes as to my observations of the 20 videotape, videotapes that were provided to me in regard 21 to the traffic stop and arrest process, as well as the 22 booking process.	
22 Q. Why don't you know?		23 Q. Okay.	
23 A. As Counsel had stated, I'm not qualified to		24 A. Prior to Mr. Thibault being taken out of the 25 make that.	
25 Q. Would I be correct that you're not qualified		25 police department to get a blood test.	
BUGBEE	Page 30	BUGBEE	Page 32
1 to render any opinions whatsoever concerning the 2 constitutionality of any of the activities that were 3 performed by Officer Wierszewski with respect to his 4 interaction with Mr. Alan Thibault on December 5th, 2014?		1 Q. With respect to Exhibit No. 6 that we 2 previously marked, in my review of those notes and given 3 your prior testimony, am I correct that the information 4 contained in the nine pages of Exhibit 6 are statements 5 that you retrieved from the NHTSA manual?	
5 A. I don't know how to answer that question 6 either.		6 A. Correct.	
7 Q. What do you mean you don't know how to answer 8 it?		7 Q. I notice that you did not write down any 8 pages with respect to where the quotations from the NHTSA 9 manual came from?	
9 A. It would be premature for me to make any kind 10 of a determination as to the constitutionality of his 11 actions because I'm simply not trained to do that.		10 A. No.	
12 Q. So is there some type of training you believe 13 could fall upon your lap, if you will, such that you 14 could render such an opinion?		11 Q. Any reason why not?	
15 A. Probably law school.		12 A. I thought those were going to be used to just 13 refresh my memory as I testified here. I didn't believe 14 they were going to be used for reference for anybody 15 else.	
16 Q. But short of that you're not comfortable in 17 answering questions concerning constitutional violations 18 in this lawsuit. Correct?		16 Q. Did you actually procure the NHTSA standard 17 manual in printed form or only in electronic format?	
19 A. Correct.		18 A. Electronic format.	
20 Q. Now were there any phase one observations in 21 your opinion made by Officer Wierszewski?		19 Q. On your version of the electronic format, did 20 you highlight any information contained within that 21 manual?	
22 A. Yes.		22 A. No. I made notes of the pertinent.	
23 Q. Did he fail in any manner whatsoever, in your 24 opinion, to complete under the circumstances that were 25 existing at the time of his observation and traffic stop		23 Q. So if we were to look at the master manual we 24 won't find any underscores, any highlighted, none of 25 that?	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 33	BUGBEE	Page 35
1 A. No.		1 Q. Go ahead.	
2 Q. Because you took what you felt was important	3 from the manual and reproduced that in writing, which we	2 A. I would like you to simplify the question	3 because I got lost. I wanted to answer the first part of
4 have marked as Exhibit 6?	5 it and I got lost.	6 Q. Are you suggesting that to comply with phase	7 one observations that Officer Wierszewski should have
5 A. Correct.	8 directed this driver, Mr. Thibault, to continue driving	9 the vehicle such that he, Officer Wierszewski, could have	10 additional observational information regarding
6 Q. Now let me see. I'm going to have Exhibit 7.	11 Mr. Thibault's operation of the truck?	12 A. No.	13 Q. Do you know how many officers observed Mr.
7 You have the original?	14 Thibault's operation of the semi tractor-trailer on	15 12-5-14?	16 A. From the video it appeared to be Officer
8 A. I have the original.	17 Wierszewski and Officer Cashion in two separate patrol	18 cars.	19 Q. So that would be two?
9 Q. Now I'm going to go back. You may use your	20 A. Yes.	21 Q. Now any other statements you would like to	22 make with respect to a phase one observation, in addition
10 notes, obviously. My question to you is: Are you in any	23 to you would have liked to have seen more driving under	24 23 circumstances?	25 these circumstances?
11 fashion whatsoever going to render any opinion that	25 Correct?	24 A. Yes.	25 Q. What would that be?
12 Officer Wierszewski failed to exercise a phase one			
13 observation with respect to his stop of Mr. Thibault on			
14 12-5-14?			
15 A. No. But I don't think that he observed much			
16 driving. He saw it jump the curb and the vehicle was			
17 stationary when he rolled up on it.			
18 Q. He had opportunity to drive down and adjacent			
19 to the vehicle and then to come up behind it. Correct?			
20 A. Correct.			
21 Q. You didn't review his deposition testimony to			
22 learn if indeed there were any other observations that he			
23 made that may not have been captured on that video.			
24 Correct?			
25 A. Correct.			
BUGBEE	Page 34	BUGBEE	Page 36
1 Q. So is that a criticism, the fact that he only	2 saw the vehicle move for the period that it did move and	1 A. I believe in the officer's report he	2 indicated that the truck was stationary at the
2 saw the vehicle move for the period that it did move and	3 strike the island separating the lanes of travel?	3 intersection with its four way flashers flashing.	4 However, when I reviewed the video it was clear that from
4 A. It's merely an observation.	5 the system that they have that, the four way or -- excuse	5 the system that they have that, the four way or -- excuse	6 me -- the patrol car lights were activated at 1:48 and 21
5 Q. Again, if you were an officer investigating	6 the circumstances, you take the facts as they come your	7 seconds a.m., which initiates the traffic stop. The semi	7 which tells me that the driver of the vehicle was
6 the circumstances, you take the facts as they come your	7 way. Correct?	8 four ways didn't become active for another seven seconds,	9 responding to the signal from the officer to pull over or
8 A. I myself would have wanted to see more	10 he was being stopped.	10 he was being stopped.	11 he was being stopped.
9 driving prior to making that determination.	11 Q. All right.	11 Q. All right.	12 A. That tells me a lot about his capability to
10 Q. Well, are you aware of the fact that	12 Q. In your review of the video of the stop did	12 Q. In your review of the video of the stop did	13 negotiate what is going on around him and to change his
11 Mr. Thibault has testified in this matter that as soon as	13 you at any point in time see the semi tractor-trailer	13 you at any point in time see the semi tractor-trailer	14 task from driving the vehicle to now complying with the
12 he saw the police officers he stopped his vehicle,	14 moving?	14 moving?	15 officer's request for him to pull over basically.
13 believing that he would be pulled over?	15 A. I saw it stationary at the corner of Moross	15 A. I saw it stationary at the corner of Moross	16 Q. My question was: Did you at any time see
14 A. No.	16 and Mack with the left turn signal. Looked like he was	16 and Mack with the left turn signal. Looked like he was	17 movement of the tractor-trailer on the video: Yes or no?
15 Q. If that were the case then how in God's green	17 waiting for the light to turn. So he was operating the	17 waiting for the light to turn. So he was operating the	18 vehicle in the left lane of traffic.
16 earth could any officer, including Officer Wierszewski,	18 Q. My question was: Did you at any time see	18 Q. My question was: Did you at any time see	19 movement of the tractor-trailer on the video: Yes or no?
17 have seen more driving?	19 You can answer, if you can.	19 You can answer, if you can.	20
20 Are you suggesting he should have gone			
21 to the driver of this semi tractor-trailer, after observing			
22 it jump the curb, if you will, and ask him to drive a			
23 quarter mile so I can watch your activity behind the wheel?			
24 MR. RADNER: I'm going to object.			
25 It's a compound question. It's calls for			
speculation.			
25 You can answer, if you can.			

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 37	BUGBEE	Page 39
<p>1 A. No, I did not.</p> <p>2 Q. Any other criticisms of Officer Wierszewski</p> <p>3 with respect to his phase one observations?</p> <p>4 A. He had said there was a -- when Officer</p> <p>5 Wierszewski approached the driver or talked to him at</p> <p>6 some point, he said that his trailer clearance lights</p> <p>7 were out. But it appeared that from the video that the</p> <p>8 clearance lights were operative.</p> <p>9 Q. Were you able to see -- well, strike that.</p> <p>10 First off, as a Michigan State Police</p> <p>11 Officer, did you ever receive any specialized training in</p> <p>12 commercial vehicle inspections?</p> <p>13 A. Yes.</p> <p>14 Q. Were you ever involved in the Motor Carrier</p> <p>15 Division of the Michigan State Police?</p> <p>16 A. No. But we were trained to motor carrier</p> <p>17 standards in the Basic Academy.</p> <p>18 Q. You would agree that the video that you saw</p> <p>19 did not provide any observational abilities of any of the</p> <p>20 clearance lights on the front of that trailer. Correct?</p> <p>21 A. Correct.</p> <p>22 Q. So you don't know, not having read Officer</p> <p>23 Wierszewski's deposition, which of the clearance lights</p> <p>24 that he was referring to. Correct?</p> <p>25 A. Correct.</p>		<p>1 formulated any opinion with respect to Mr. Thibault</p> <p>2 operating under the influence of alcohol or drugs?</p> <p>3 A. I don't know how he formed his opinion.</p> <p>4 Q. It would be important to know what of a phase</p> <p>5 one, phase two and/or phase three observation an officer</p> <p>6 utilizes in determining to arrest someone for OWI.</p> <p>7 Correct?</p> <p>8 A. Could you rephrase that.</p> <p>9 MR. DEGROOD: Could you read that</p> <p>10 back to him, please.</p> <p>11 (Record repeated.)</p> <p>12 Q. That would be important?</p> <p>13 MR. RADNER: I'm just going to</p> <p>14 object. Important for what.</p> <p>15 Q. Important if possible, correct?</p> <p>16 A. If possible.</p> <p>17 Q. What do you mean by that?</p> <p>18 A. It's kind of a vague question.</p> <p>19 Q. Anything else that you're critical of with</p> <p>20 respect to the phase one portion of this stop?</p> <p>21 A. No.</p> <p>22 Q. What is the phase two portion of the NHTSA</p> <p>23 training for standard field sobriety testing?</p> <p>24 A. Contact with the driver.</p> <p>25 Q. Did Officer Wierszewski have any involvement</p>	
BUGBEE	Page 38	BUGBEE	Page 40
<p>1 Q. So the fact that you saw operational clearing</p> <p>2 lights on the rear of this trailer does not rule out the</p> <p>3 fact that lights on the front of the trailer were</p> <p>4 inoperable. Correct?</p> <p>5 A. Correct. I was basing it on my observation.</p> <p>6 Q. So you wouldn't be critical of Officer</p> <p>7 Wierszewski with respect to his observation of a</p> <p>8 clearance lamp not working, if indeed it were his</p> <p>9 testimony it was on the front of the trailer. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. What about the license plate lamp, was that</p> <p>12 operable or couldn't you tell?</p> <p>13 A. Couldn't tell.</p> <p>14 Q. Anything else that you are critical of</p> <p>15 Officer Wierszewski with respect to what he had to work</p> <p>16 with for a phase one observation of this scenario as per</p> <p>17 the NHTSA standard field sobriety testing training?</p> <p>18 A. I'm not critical of his stop but I don't</p> <p>19 think it provided indications of intoxicated driving.</p> <p>20 Q. What did it provide?</p> <p>21 A. It provided indication of a civil infraction,</p> <p>22 perhaps improper lane use. That was it.</p> <p>23 Q. Well, do you have any basis upon which to</p> <p>24 conclude that at any time before Officer Wierszewski</p> <p>25 moved on to a phase two or phase three observation, had</p>		<p>1 in personal contact with Mr. Thibault?</p> <p>2 A. Yes.</p> <p>3 Q. Are you at any point in time offering any</p> <p>4 opinions that Officer Wierszewski failed to complete a</p> <p>5 phase two portion of his examination of Mr. Thibault?</p> <p>6 A. I think he completed the examination.</p> <p>7 Q. Did he complete the phase two examination in</p> <p>8 keeping with the standards expected of him as a</p> <p>9 reasonable and prudent public safety officer under the</p> <p>10 circumstances as they existed on December 5th, 2014?</p> <p>11 A. Yes.</p> <p>12 Q. What is the phase three portion of the NHTSA</p> <p>13 training?</p> <p>14 A. It's the standard field sobriety tests.</p> <p>15 Q. How many standard field sobriety tests are</p> <p>16 there that are recognized within the battery of available</p> <p>17 standard field sobriety tests?</p> <p>18 A. There are three scientifically validated</p> <p>19 tests.</p> <p>20 Q. Those are?</p> <p>21 A. The horizontal gaze nystagmus. The walk and</p> <p>22 turn and the one leg stand.</p> <p>23 Q. Would I be correct that as a field training</p> <p>24 officer, when you were so engaged and employed with the</p> <p>25 Michigan State Police, that you would have instructed</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 41	BUGBEE	Page 43
<p>1 those officers training in the field with you to 2 additional field sobriety testing over and above those 3 three. Yes or no?</p> <p>4 A. Yes.</p> <p>5 Q. What additional field sobriety testing, over 6 and above the three that you have described, would you 7 instruct your fellow officers that were within your 8 charge as an FTO?</p> <p>9 A. There are other non validated tests which can 10 be used.</p> <p>11 Q. Which ones would you have trained individuals 12 in? And by the way, when you say: Validated versus non 13 validated, what do you mean by that?</p> <p>14 A. Well, through NHTSA standards there are only 15 three scientifically validated tests which would be used 16 to make the arrest decision. Those are the three 17 aforementioned tests that I said.</p> <p>18 Q. When you say "validated" how are they 19 validated, if you know?</p> <p>20 A. They were scientifically validated through 21 studies in the eighties.</p> <p>22 Q. Were you involved in any of those studies?</p> <p>23 A. No.</p> <p>24 Q. Have you reviewed the results of any of those 25 studies?</p>		<p>1 have probable cause to arrest someone for OWI in advance 2 of the results of blood tests for alcohol becoming 3 available for that officer. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. In fact, when you were pulling people over as 6 a Michigan State Police Officer or Trooper, were there 7 times that you needed to have blood drawn?</p> <p>8 A. Yes.</p> <p>9 Q. It's my understanding when that occurred the 10 blood sample was not immediately analyzed and more likely 11 than not was not analyzed even within 48 to 72 hours of 12 the arrest. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Your blood samples, I'm assuming, like the 15 sample drawn on Mr. Thibault would go to the Michigan 16 State Police Crime Lab. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Likewise, would you agree that an officer 19 could make an arrest of somebody for OWI with probable 20 cause, even though a blood sample for drugs that had been 21 removed had not yet had the findings returned?</p> <p>22 A. Correct.</p> <p>23 Q. Did you review any of the laboratory reports 24 generated in this case with respect to blood samples 25 removed from Mr. Thibault?</p>	
BUGBEE	Page 42	BUGBEE	Page 44
<p>1 A. No.</p> <p>2 Q. Your familiarity with the alleged validation 3 is basically through the statements that NHTSA makes in 4 its manuals. Correct?</p> <p>5 A. Through my training and the alcohol 6 enforcement, the standard field sobriety testing courses 7 I have taken such that those were all covered. There 8 were segments that talked about the scientific studies 9 that were done.</p> <p>10 Q. Did you at any point in time in your career 11 as a Michigan State Police Officer, ever arrest a subject 12 that you believed was operating under the influence but 13 at or near the time of arrest had a negative PBT that you 14 subsequently had blood samples drawn that ultimately came 15 back negative for alcohol and negative for drugs even 16 though you had arrested the individual for OWI?</p> <p>17 A. Not that I recall.</p> <p>18 Q. But you haven't gone back and looked at all 19 of your stops, have you?</p> <p>20 A. No.</p> <p>21 Q. You would agree that indeed an officer may 22 have probable cause to arrest someone for OWI who has 23 blown negative or zero results on a PBT. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. You likewise understand that an officer may</p>		<p>1 A. Yes.</p> <p>2 Q. Which ones?</p> <p>3 A. They were provided to me as part of the 4 Complaint Report that I talked about from the --</p> <p>5 Q. Could I see what you're referring to as the 6 Complaint Report?</p> <p>7 A. This is listed as Grosse Pointe Farms Public 8 Safety Complaint report No. 140005021. Happened 12-5 of 9 2014, by Officer Wierszewski.</p> <p>10 Q. Did you make a copy of that to give to me as 11 a result of the Notice to Produce?</p> <p>12 A. I believe that's on the disc that I gave you.</p> <p>13 Q. You just put together that report in its 14 entirety from your original that I might quickly review.</p> <p>15 A. Pardon me?</p> <p>16 Q. May I see what you're calling the compendium 17 of the report. You just put it together.</p> <p>18 MR. DEGROOD: Solomon, he can do it.</p> <p>19 MR. RADNER: I'm just looking at what 20 he's doing.</p> <p>21 MR. DEGROOD: Slipping the Joker in 22 the deck, are you?</p> <p>23 MR. RADNER: The record should be 24 very clear that I have not touched the documents. 25 I'm merely looking over his shoulder.</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 45	BUGBEE	Page 47
<p>1 A. Would you like me to state for the record 2 what is in here?</p> <p>3 Q. If you could just hand it to me when you have 4 got it all put together. I'll even let you borrow a 5 paperclip if you would like.</p> <p>6 A. Okay. I'm handing to you what was given to 7 me by Counsel and stated to be the Police Report.</p> <p>8 Q. Thank you.</p> <p>9 A. Containing the aforementioned or afore 10 requested -- if that's a word -- chemical test results.</p> <p>11 MR. DEGROOD: Let's mark this as an 12 Exhibit and count the pages, please.</p> <p>13 (Deposition Exhibit No. 8 marked for 14 identification.)</p> <p>15 Q. I'm going to show you what we have marked as 16 Exhibit 8 to your deposition. There are 17 pages. 17 Specifically I want to go through the laboratory results.</p> <p>18 A. Yes.</p> <p>19 Q. First off, when was this report authored to 20 the best of your knowledge?</p> <p>21 A. Well, it says a report date and time 12-5 of 22 '14 at 2:19 p.m. That doesn't tell me when it was 23 authored though.</p> <p>24 Q. All right.</p> <p>25 A. Excuse me. Stop.</p>		<p>1 Grosse Pointe Farms Police Report?</p> <p>2 A. No. These were provided to me as well as the 3 report by Counsel.</p> <p>4 Q. These were what? What are these the labs 5 from?</p> <p>6 A. Those look like a private test that was 7 sought by Mr. Thibault.</p> <p>8 Q. You didn't read his deposition though, 9 correct?</p> <p>10 A. No, I didn't.</p> <p>11 Q. Now did you ever receive the laboratory 12 report from the Michigan State Police relative to an 13 alcohol study performed by the Department of State Police 14 Forensic Science?</p> <p>15 A. That's not in this information, no.</p> <p>16 Q. The lab report that clearly is a copy of the 17 State of Michigan, Department of State Police is related 18 to a blood sample that relates to whether or not drugs 19 were included. Correct?</p> <p>20 A. Well, I don't know what they tested for but 21 they say what the results are.</p> <p>22 Q. And they show that they didn't find the drugs 23 that are specifically identified in the document. 24 Correct?</p> <p>25 A. It says item number one not detected and it</p>	
BUGBEE	Page 46	BUGBEE	Page 48
<p>1 Q. Go ahead.</p> <p>2 A. Created on -- now this date here on the 3 bottom of page two of four states it was created on 4 12-19, 2014 at 2:09 p.m.</p> <p>5 Q. Do you know if that's just the time that the 6 copy that we have marked was made at the time as opposed 7 to the actual creation of same?</p> <p>8 A. I don't know.</p> <p>9 Q. We do know from your review of Exhibit No. 8, 10 that the blood samples were drawn on 12-5, 2014. 11 Correct?</p> <p>12 A. Yes. Well, that would not be on this sheet. 13 It would be on another sheet.</p> <p>14 Q. It clearly would be on --</p> <p>15 A. That would be on this one. This is the one 16 the officer would have to fill out and that says 12-5 of 17 '14.</p> <p>18 Q. The date of collection, right?</p> <p>19 A. Right.</p> <p>20 Q. Now there are two pages in here.</p> <p>21 A. Yes.</p> <p>22 Q. That are Specimen Result Certificate. 23 Attention: Kacey Hothem.</p> <p>24 A. Uh-huh.</p> <p>25 Q. You believe these are part of the actual</p>		<p>1 shows a whole list of drugs that were not detected.</p> <p>2 Q. Correct. Now you're not a toxicologist, 3 correct?</p> <p>4 A. No, I am not.</p> <p>5 Q. I'm assuming you have already told me you 6 didn't have any training as a drug recognition expert. 7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. Would I also be correct that you have 10 received no training with respect to what particular 11 designer drugs may have been utilized by the public in 12 December of 2014. Is that fair enough?</p> <p>13 A. That's not a yes or a no question. I 14 received extensive training in basic and advanced 15 narcotics with the Michigan State Police as to the 16 existence and effects of many types of drugs.</p> <p>17 Q. In that training you're aware of the fact 18 that some of these -- I'll use the term designer drugs -- 19 metabolize out of an individual's system even before a 20 blood sample can be retrieved, correct?</p> <p>21 A. I don't know.</p> <p>22 Q. That's beyond your expertise?</p> <p>23 A. I would have to review my past training 24 materials and such to prepare for that question. I don't 25 know which ones would, to render a definitive answer.</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 49	BUGBEE	Page 51
1 Q. I'm just asking, not specifically but in a 2 general sense, you are aware of the fact that some drugs 3 can metabolize out of someone's system before a blood 4 sample is even retrieved?		1 A. No. 2 Q. Is there any aspect of the three standardized 3 tests that you believe were not appropriately 4 administered by Mr. Wierszewski?	
5 A. No. I'm not aware of that. 6 Q. Are you aware of the fact that some drugs can 7 metabolize out of a blood sample that is merely sitting 8 in a vial waiting to be tested?		5 A. Yes. 6 Q. Let's start with the walk and turn. Was that 7 properly administered?	
9 A. No. 10 Q. That's beyond your training? 11 A. No. It may have been -- it was certainly 12 within my training I'm willing to say but as far as if I 13 remember that part of it, no. I don't remember that.		8 A. It was properly administered. 9 Q. It was? 10 A. Yes. 11 Q. On how many occasions?	
14 Q. So as you sit here today you're not rendering 15 any opinions on that topic? 16 A. Correct. 17 Q. Now let's go back to our face three, which is 18 what, pre-arrest training and screening?		12 A. Two that I saw. 13 Q. Where were they, the ones that you saw, where 14 were they occurring? 15 A. There were two that were administered on the 16 road. 17 Q. At the stop?	
19 A. Correct. 20 Q. Now with respect to the phase three 21 pre-arrest screening of the NHTSA training, are you in 22 any way critical of Officer Wierszewski's performance of 23 any pre-arrest screening? 24 A. I don't believe they provided probable cause 25 to make the arrest.		18 A. Yes. 19 Q. Do you believe either of those -- let's talk 20 about the first one. The first one that was administered 21 was witnessed, to your knowledge, by how many officers of 22 Grosse Pointe Farms? 23 A. Two. 24 Q. Which two? 25 A. Based on just what was going on in the video	
BUGBEE	Page 50	BUGBEE	Page 52
1 Q. So it is your opinion that in your judgment 2 what you saw with respect to these three scientifically 3 discussed and verified standardized field sobriety tests, 4 in your opinion it didn't provide probable cause, 5 correct? 6 MR. RADNER: I'm just going to object 7 to that question that there was a lot more in the 8 video than just those three scientific tests. But 9 if you understood the question and you can answer 10 it with a yes or a no, please feel free. 11 A. Can you ask the question again, please. 12 Q. Sure. First off, what field sobriety tests 13 in your opinion were performed if any that provided 14 probable cause of operation OWI by Mr. Thibault on the 15 day in question? 16 A. In my observation it's my opinion none of the 17 tests -- which include the three standardized tests as 18 well as all the additional tests that he gave him -- rose 19 to the level of probable cause to make an arrest. 20 Q. You weren't there that evening, correct? 21 A. No. This is based on an observation of the 22 video. Yes. 23 Q. Did you see all of the testing that was 24 performed upon Mr. Thibault at the station that may not 25 have been captured on any video? Yes or no?		1 I think it was Officer Wierszewski and Officer Cashion. 2 She was continually referred to as Veronica. So I 3 presume that's her. 4 Q. By the way, you did review the drug 5 evaluation form that was completed by Officer 6 Wierszewski, correct? 7 A. Yes. 8 Q. Am I correct that at no time during your 9 professional activities did you ever complete those types 10 of tests and fill out that type of a form? 11 A. We filled out those types of a form. 12 Q. Those exact forms? 13 A. Not that exact form. That type of form that 14 documented our observations in the standard field 15 sobriety testing. 16 Q. Did you ever take blood pressure of subjects? 17 Yes or no. 18 A. No. 19 Q. Did you ever take temperatures of subjects? 20 Yes or no? 21 A. No. 22 Q. Did you ever complete any eye examinations in 23 addition to the vertical or horizontal gaze nystagmus 24 test? Yes or no? 25 A. Yes.	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 53	BUGBEE	Page 55
<p>1 Q. Which ones did you complete besides that?</p> <p>2 A. Pupil size.</p> <p>3 Q. What other tests are recorded on the DRE form</p> <p>4 completed by Officer Wierszewski -- and, please, you may</p> <p>5 refer to it -- that you would not have completed in your</p> <p>6 analysis of a subject that you were evaluating for</p> <p>7 possible arrests of OWI?</p> <p>8 A. We never did pulse and time.</p> <p>9 Q. All right?</p> <p>10 A. We never did convergence. Never did the</p> <p>11 internal clock test. The forms that we filled out didn't</p> <p>12 have a section for nasal area, however, had that</p> <p>13 observation been made it would have been put in a report.</p> <p>14 Rebound dilation was a part of the horizontal gaze</p> <p>15 nystagmus training examination. Reaction to light was</p> <p>16 not.</p> <p>17 Forms I used didn't have a diagram to</p> <p>18 mark their arms. This one has a right arm and a left arm.</p> <p>19 It didn't have it. We didn't take their blood pressure. We</p> <p>20 didn't do their temperature. If things like muscle tone</p> <p>21 were pronounced enough to notice, we would have documented</p> <p>22 that in a narrative. That's the only examinations that are</p> <p>23 on this form, that were not examined in the past that I</p> <p>24 recall.</p> <p>25 Q. Okay. Were you trained to observe and make</p>	<p>1 Q. All right. The vertical gaze nystagmus is</p> <p>2 not one of the scientifically verified tests?</p> <p>3 A. No, it's not.</p> <p>4 Q. Now did you record in your notes the time on</p> <p>5 the tape that you believe depict Mr. Tibault's efforts at</p> <p>6 completing the first walk and turn?</p> <p>7 A. Yes.</p> <p>8 Q. On what page of your notes is this?</p> <p>9 A. Page four.</p> <p>10 Q. Page four?</p> <p>11 A. Yes.</p> <p>12 Q. That would be what we have marked as</p> <p>13 Exhibit 7, correct?</p> <p>14 A. Yes.</p> <p>15 Q. The four is circled in the upper right hand</p> <p>16 corner. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. What was the time on the tape that you have</p> <p>19 indicated the first walk and turn was attempted by the</p> <p>20 plaintiff?</p> <p>21 A. 1:53 and 25 seconds a.m. That was when the</p> <p>22 instructions were began.</p> <p>23 Q. I think you told me that the administration</p> <p>24 of that test by Officer Wierszewski was proper, correct?</p> <p>25 A. Yes.</p>		
BUGBEE	Page 54	BUGBEE	Page 56
<p>1 conclusions with respect to whether or not a subject was</p> <p>2 under the effects of a central nervous system stimulant?</p> <p>3 A. Yes. The training I went through covered</p> <p>4 that.</p> <p>5 Q. What stimulants would you look for and what</p> <p>6 were the -- strike that.</p> <p>7 What were the CNS symptoms that would</p> <p>8 lead you to believe that a subject was under the influence</p> <p>9 of a stimulant?</p> <p>10 A. Well first, presence of drugs or drug</p> <p>11 paraphernalia during the phase two. In general, if they</p> <p>12 were to pass the three validated tests, that being the</p> <p>13 horizontal gaze nystagmus, the walk and turn and the one</p> <p>14 leg stand. If their pupils were an uneven size and they</p> <p>15 also had vertical gaze nystagmus that may indicate some</p> <p>16 drug use.</p> <p>17 Q. Stimulant versus a depressant?</p> <p>18 A. What about it?</p> <p>19 Q. Well, I'm asking you what you look for to</p> <p>20 determine if someone is potentially under the influence</p> <p>21 of a CNS stimulant versus a CNS depressant, if you know?</p> <p>22 A. Within the scope of my background and</p> <p>23 training, having not gone through the drug recognition,</p> <p>24 we would have recognized a potential presence of some</p> <p>25 drugs and moved on from there.</p>	<p>1 Q. Did you see any indication on your review of</p> <p>2 Mr. Thibault's first walk and turn that indicated he was</p> <p>3 unsteady and using his arms for balance?</p> <p>4 A. Yes.</p> <p>5 Q. Is that an indication of possible influence</p> <p>6 by alcohol or drugs with respect to the walk and turn?</p> <p>7 A. Yes.</p> <p>8 Q. Did you see any evidence, physical evidence,</p> <p>9 during the first Thibault walk and turn that we're</p> <p>10 talking about that suggested to you that Mr. Thibault was</p> <p>11 under the influence of alcohol or drugs?</p> <p>12 A. No.</p> <p>13 Q. None?</p> <p>14 A. None. Not in my opinion.</p> <p>15 Q. You would agree that other individuals could</p> <p>16 clearly differ with your opinion, correct?</p> <p>17 MR. RADNER: Objection. Speculation.</p> <p>18 Q. Go ahead.</p> <p>19 A. Others could.</p> <p>20 Q. Have you shown this video footage that we're</p> <p>21 discussing to any other actively employed officers,</p> <p>22 either Michigan State Police or other certified law</p> <p>23 enforcement officers, and requested their opinion as to</p> <p>24 whether it is demonstrative or not of someone impaired?</p> <p>25 A. No.</p>		

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 57	BUGBEE	Page 59
<p>1 Q. What did you see during this first walk and 2 turn that lead you to believe and conclude no probable 3 cause existed to suspect impaired individual?</p> <p>4 A. Well, during the instruction phase Mr. 5 Thibault was very steady. He maintained the position 6 that the officer asked him to while he was giving 7 instructions. Okay. As he performed the test, though he 8 did use his arm to balance, it didn't appear as though he 9 stepped off the line.</p> <p>10 He did the proper amount of steps, which 11 indicated that he had understood the questions, recalled 12 them correctly and executed it properly. He did a good turn 13 without losing control there and walked back. So in all, 14 the only thing I saw him do which may raise some suspicion 15 was he raised his arms above six inches to maintain his 16 balance.</p> <p>17 Q. Did he maintain an upright position of his 18 upper trunk as he completed the walk and turn we are 19 discussing?</p> <p>20 A. At one point it seems as though he lost his 21 balance but did not step off the line.</p> <p>22 Q. Were you able to see his feet in the video 23 that was provided to you: Yes or no?</p> <p>24 A. No.</p> <p>25 Q. All right. So when he appeared to lose his</p>		<p>1 Q. Now -- do you need a break?</p> <p>2 A. Bathroom.</p> <p>3 MR. DEGROOD: Let's go off the 4 record. We'll take a break. (Brief recess.)</p> <p>6 Q. How many one leg stands did you observe on 7 the videos that you watched?</p> <p>8 A. I observed one.</p> <p>9 Q. In your notes do you have the notation as to 10 the time on the tape it occurred?</p> <p>11 A. Yes. 1:55 and 06 seconds a.m.</p> <p>12 Q. It's on page four as well?</p> <p>13 A. Four, yes.</p> <p>14 Q. Did you believe that you saw anything during 15 the performance of that test that lead you to believe it 16 was administered inappropriately?</p> <p>17 A. No.</p> <p>18 Q. Did you find anything during that test that 19 lead you to believe possibly probable cause existed that 20 this individual was impaired?</p> <p>21 A. No.</p> <p>22 Q. What during this test lead you to believe 23 that this individual was not impaired?</p> <p>24 A. Well, during the two phases of the test, the 25 instruction phase and the performance phase. During the</p>	
BUGBEE	Page 58	BUGBEE	Page 60
<p>1 balance you cannot objectively state that he did or did 2 not come off the line. True?</p> <p>3 A. It appeared as though he stayed on the line 4 to me.</p> <p>5 Q. You cannot objectively state -- because you 6 were not present -- that he did or did not come off the 7 line. Correct?</p> <p>8 A. Correct.</p> <p>9 MR. RADNER: Asked and answered.</p> <p>10 Q. You would agree that Officer Wierszewski and 11 Officer Cashion would be in a better vantage point being 12 at the scene to determine if indeed at any time during 13 the first walk and turn Mr. Thibault came off the line. 14 True?</p> <p>15 A. True.</p> <p>16 Q. Any other comments that you have with respect 17 to his first walk and turn?</p> <p>18 A. Yes.</p> <p>19 Q. What would that be?</p> <p>20 A. I would have evaluated that as a pass or a 21 good test. I would not have felt that was a fail based 22 on my observations.</p> <p>23 Q. All right. Anything else that you wish to 24 comment on that first walk and turn?</p> <p>25 A. No.</p>		<p>1 instruction phase Mr. Thibault was instructed to stand in 2 a certain position. Take that position until instructed 3 to perform the test. He did so as instructed. I think 4 he had to move to do it from his back to the camera to 5 side to the camera and he was -- he followed instructions 6 well.</p> <p>7 There was no confusion. When he was 8 standing in that position listening to the instructions he 9 maintained the position. No swaying. No difficulty. He 10 paid attention to the instructions. When told to do the 11 test -- let me correct that.</p> <p>12 There was one thing that Officer 13 Wierszewski did do. He stopped observing Mr. Thibault for a 14 moment. He returned to the patrol car. Then came back. So 15 his observation stopped for a moment. At 1:55 and 53 16 seconds he instructed him to move to a different position. 17 He resumed another position which was -- 18 could be more favorable to the camera. He followed the 19 instructions well. There was no swaying and looked like he 20 had good balance as he listened to the instructions.</p> <p>21 Q. Okay.</p> <p>22 A. At 1:56 and 59 seconds, Officer Wierszewski 23 instructed Mr. Thibault to start the test. Instructed 24 him to lift his foot higher than six inches at one point 25 it appeared. He left him in that position for what was a</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 61	BUGBEE	Page 63
<p>1 35 count. That was Mr. Thibault counting, which 2 according to the tape was actually 24 seconds. At 1:56 3 and 35 seconds he instructed Mr. Thibault to put his 4 foot down.</p> <p>5 My observations was that the test was 6 done properly. He had slight raising of the arms for 7 balance. Proper count. And the tempo was good. There was 8 no slurred speech as he was speaking and counting out. He 9 had no loss of balance. He was able to complete the test 10 without putting his foot to the ground.</p> <p>11 Q. Anything else with respect to the one leg 12 stand?</p> <p>13 A. Like I said, at one point it appears as 14 though he instructed him to lift his leg higher than 15 six inches. He kept telling him: Higher, higher, 16 higher, which put Mr. Thibault in a difficult position to 17 maintain his balance.</p> <p>18 Q. Would you agree that when he was instructed, 19 Mr. Thibault that is, to raise his foot higher, the 20 camera did not allow the viewer of the video to actually 21 see how high the foot was?</p> <p>22 A. Correct. But the position of the knee and 23 the lower leg appeared though it was higher than the 24 six inches.</p> <p>25 Q. Do you know how tall he was?</p>		<p>1 returned to the alphabet again and had him do the 2 alphabet. So it wasn't performed twice but it was broken 3 because it was mixed in with the numbers test.</p> <p>4 Q. Did he successfully complete the numbers 5 test?</p> <p>6 A. He successfully completed the numbers test.</p> <p>7 Q. That test is the test where he was asked to 8 pick a number between 19 and 21?</p> <p>9 A. Well, my observations of that were he 10 followed the instructions well. There was no confusion 11 as to what was being asked. There was no slurred speech. 12 He gave a proper answer.</p> <p>13 Q. Did he successfully complete the alphabet 14 test?</p> <p>15 A. It appears as though he was confused about 16 the -- what was being asked of him. But it was broken 17 down into two sections between the -- at 1:52 and 21 18 seconds, Officer Wierszewski asked him if he knows his 19 alphabet from A to Z. He responded yes.</p> <p>20 Q. Where was he standing when that question was 21 asked of him?</p> <p>22 A. He was standing in front of the patrol car 23 right in front of the camera. At that point he was asked 24 to turn and face the truck.</p> <p>25 Q. Do you recall if he was asked if he knew the</p>	
BUGBEE	Page 62	BUGBEE	Page 64
<p>1 A. No.</p> <p>2 Q. Would you agree that Officer Wierszewski and 3 Officer Cashion would be in a better vantage point to 4 determine if indeed he was requested to lift his knee 5 only six inches and upon failing to do so, was instructed 6 to attempt to return to six inches?</p> <p>7 A. They would be in a better vantage point to 8 observe that.</p> <p>9 Q. In addition to the three standardized field 10 sobriety tests that you have identified, what additional 11 sobriety, field sobriety tests were administered?</p> <p>12 A. There were many.</p> <p>13 MR. RADNER: Are we still on the one 14 leg stand or are we moving on?</p> <p>15 MR. DEGROOD: We're talking about 16 what other tests were administered over and above 17 the three standardized field sobriety tests.</p> <p>18 A. It appears as though there were four 19 additional tests given. Some of them were given more 20 than once.</p> <p>21 Q. Which were they?</p> <p>22 A. The alphabet was given twice. Or actually he 23 started the instructions for the alphabet. Officer 24 Wierszewski started the instructions for the alphabet and 25 then he had him take the numbers test and then he</p>		<p>1 alphabet when he was standing outside the cab to the 2 semi-truck?</p> <p>3 A. That's what I'm talking about right now. He 4 was --</p> <p>5 Q. So he was not directly in front of the hood, 6 if you will, of Officer Wierszewski's car when he was 7 asked if he knew the alphabet. Correct?</p> <p>8 A. He was through -- at this particular test 9 this time, he was asked at 1:52 and 21. He was standing 10 in front of the patrol car with his face to the patrol 11 car. After he was asked if he knew the alphabet he was 12 asked to turn and face the truck. I notice he made the 13 turn, 180-degree turn, steady. Followed instructions 14 well. No swaying. No staggering. So that's what I 15 observed.</p> <p>16 Q. All right. Do you remember what he was 17 subsequently instructed with respect to the alphabet 18 test?</p> <p>19 A. Yes. At 1:52 and 42 seconds, after having 20 successfully completed the numbers test, Officer 21 Wierszewski then returned to the alphabet test and told 22 him to recite the alphabet, starting with D and ending 23 with O.</p> <p>24 Q. Did he start with D or start with A?</p> <p>25 A. He mumbled A through C to get him to D. He</p>	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 65	BUGBEE	Page 67
1 recited D. Went all the way to V and then returned to O.		1 A. The way it said in the manual.	
2 Q. So that would be interpreted by some		2 Q. Well, the manual covered non-verifiable field	
3 individuals as a failed test. True?		3 sobriety testing and if so what manual was that?	
4 A. No, because there's other observations that		4 A. That was the aforementioned manual that I had	
5 need to be taken into account.		5 spoken of, being the Advanced Road Side Impaired Driving	
6 Q. What other observations?		6 Enforcement Manual.	
7 A. Although he did the test improperly, he did		7 Q. Now that you had the hard copy there what was	
8 it with clear speech. He wasn't confused. Although he		8 the edition of that again?	
9 did it wrong, he wasn't necessarily confused. The		9 A. That was the R5 slash 13 edition.	
10 letters were said in sequence or the letters were said in		10 Q. Okay.	
11 sequence. He maintained a steady position of balance		11 A. As stated earlier.	
12 throughout the test.		12 Q. Any other field sobriety tests that were	
13 I interpreted as though he was confused		13 performed that we haven't talked about, knowing full well	
14 of what he was asked because it was never said, quote,		14 that there is a second walk and turn and we have not yet	
15 without saying any other letters. He just said: Go from D		15 talked about the HGN?	
16 to O. He didn't say: Don't say any other letters.		16 A. No.	
17 Q. All right. Any other tests that are field		17 Q. Was the HGN test performed?	
18 sobriety tests other than the three standardized field		18 A. Yes.	
19 sobriety tests, of which we have already spoken about		19 Q. Do your notes reflect at what time on the	
20 two?		20 tape that you were provided you saw the HGN test	
21 A. Finger count. He did the finger count at		21 performed?	
22 1:52 and 59 seconds.		22 A. 1:58 and five seconds a.m.	
23 Q. Anything else?		23 Q. Was it administered properly?	
24 A. He, at 1:56 and 38 seconds, he did a modified		24 A. I don't believe so.	
25 Romberg.		25 Q. In addition to the belief that it was not	
BUGBEE	Page 66	BUGBEE	Page 68
1 MR. RADNER: Can you spell that		1 properly administered, any other criticisms of the manner	
2 please?		2 in which that test was conducted?	
3 THE WITNESS: R-o-m-b-u-r-g, I		3 A. No.	
4 believe.		4 Q. With respect to the administration of that	
5 Q. What is the modified Romberg?		5 test, what is it that you believe was improperly	
6 A. Well, that was instructed to be: Close his		6 completed or completed?	
7 eyes. Hold his head back. And I don't believe that was		7 A. Well, it appeared as though it was mixed with	
8 instructed properly based on the NHTSA guidance. But he		8 another test that is called the lack of convergence test.	
9 was instructed to hold his head back. Close his eyes and		9 So there was --	
10 let him know when 30 seconds were over.		10 Q. What page are you reading from Exhibit 7?	
11 Q. What was improper with respect to that		11 A. Five.	
12 instruction?		12 Q. Page five. Thank you. Continue, please.	
13 A. It doesn't instruct that the driver or		13 A. It appeared that the HGN test, the horizontal	
14 suspect is to count in their head. It just says: Let me		14 gaze nystagmus, was conducted in conjunction with the	
15 know when you think 30 seconds is over at the end of the		15 lack of convergence test, which are two different tests.	
16 test.		16 They were both mixed into one test, which I believe	
17 Q. Isn't that implied, if you are going to let		17 complicates the horizontal gaze nystagmus in that the	
18 me know when 30 seconds are over that you're counting in		18 NHTSA guidance warns of fatiguing the eyes prior to	
19 your head?		19 getting or prior to getting a good test. Eye fatigue is	
20 A. But that's not part of the test to ask how		20 a factor and a negative HGN test for the NHTSA guidance.	
21 they counted. That seemed to be important to Officer		21 Q. Was there a negative HGN test?	
22 Wierszewski, the manner in which he counted. That's not		22 A. I don't believe there was.	
23 even instructed in the NHTSA manual. So it just wasn't		23 Q. What do you believe -- again, let me just see	
24 in compliance with the way they instructed.		24 that I'm clear. The video that you were provided with	
25 Q. With the way that you instructed, correct?		25 when the HGN test, and in your opinion the co-mingled	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 69	BUGBEE	Page 71
1	convergence test occurred, you could not see the face or	1	A. At 12 -- excuse me. At 2:50 and 28 seconds
2	eyes of the subject. True?	2	the HGN was given, again, in the booking room. It's the
3	A. True.	3	second time it's given.
4	Q. Mr. Thibault's back was facing the camera.	4	Q. Was it given by Officer Wierszewski?
5	Correct?	5	A. Yes.
6	A. Correct.	6	Q. How much time elapsed between the one at the
7	Q. So neither you nor I or someone who only has	7	traffic stop and this one in the booking; over an hour?
8	benefit of looking at this tape, we cannot objectively	8	A. The one at the traffic stop was at 1:58. The
9	state what the actual response Mr. Thibault had to that	9	one in the booking room was at 2:50. Less than an hour.
10	test or in your opinion tests plural. True?	10	Q. So about 50 minutes between the two?
11	A. True.	11	A. Roughly. 52 minutes.
12	Q. Were the results of the HGN test recorded	12	Q. You're not suggesting that the HGN performed
13	anywhere in the records completed by Officer Wierszewski?	13	at the traffic stop fatigued Mr. Thibault's eyes with
14	A. They were captured on the videotape.	14	respect to the second HGN performed 50 minutes later, are
15	Q. Are they identified anywhere in his written	15	you?
16	report?	16	A. No. I'm basing my conclusion merely on the
17	A. No.	17	officer's statement.
18	Q. So there's nothing mentioned in the DRE	18	Q. What is it of the officer's statement that
19	report about that?	19	you are basing your conclusion on?
20	A. He says he failed the HGN test but I don't	20	A. At 2:10 and 48 seconds another officer pulls
21	know which one it was. He gave it to him three times.	21	up. Potentially a senior officer or supervisor because
22	Q. So that test was provided in your opinion to	22	Mr. Officer Wierszewski felt the need to report to him
23	the subject on three occasions. Correct?	23	and he said, quote: He hit the curb. He can't do
24	A. Correct.	24	some -- he can't do sobriety tests. He doesn't have HGN.
25	Q. Were any of those occasions when the subject	25	That's what I base the results on, his statement: He
BUGBEE	Page 70	BUGBEE	Page 72
1	was at the station after being removed from the stop?	1	doesn't have HGN to his counterpart.
2	A. Yes.	2	Q. What does that mean to you?
3	Q. Do you know how much time elapsed between	3	A. That means that he didn't test positive for
4	those tests?	4	horizontal gaze nystagmus.
5	A. Yes.	5	Q. So in your opinion that statement would
6	Q. How much time elapsed -- well, strike that.	6	validate that there was no jerking eye movement during
7	How many HGN's did you see administered	7	the performance of that test in the horizontal plane.
8	at the scene of the stop?	8	Correct?
9	A. One.	9	A. I just take it on its face that it was a
10	Q. How many did you see administered at the	10	negative test because the officer said so.
11	station?	11	Q. All right. Now anything else about the HGN?
12	A. At least one. But I don't know what happened	12	I think you indicated you thought that it was improperly
13	when they went off camera. Mr. Thibault was taken off	13	provided. Have we covered all of your criticisms of the
14	camera for a few tests I believe. The audio sounded like	14	administration of that test by Officer Wierszewski that
15	they were doing sobriety tests off camera.	15	you believe were inappropriate?
16	Q. Did you see the performance of any HGN tests	16	A. Those are my observations, however, I did
17	captured on the video reflecting the activities at the	17	observe that during the test Mr. --
18	station?	18	Q. What page are you reading from your notes;
19	A. Could you repeat that?	19	upper right corner.
20	Q. Sure. Did you see, when you reviewed the	20	A. Yes. I know where the page number is. I'm
21	station videotapes --	21	just reading.
22	A. Oh.	22	Q. Okay.
23	Q. -- the administration of any HGN tests and if	23	A. I'm looking at page number five.
24	so, at what time on the video footage did you see such	24	Q. Okay. What on that page were you about to
25	tests administered?	25	tell me about during the test?

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 73	BUGBEE	Page 75
1 A. That is all.		1 A. No, I don't have any.	
2 Q. That was it?		2 Q. Okay.	
3 A. That's all.		3 A. Yes, I can answer your question. The answer	
4 Q. Any criticisms?		4 is no.	
5 A. I have no other observations.		5 Q. That's fair enough.	
6 Q. I'm looking at the bottom of five and it		6 What is it that you reviewed if anything	
7 says: 33. I'm assuming that is Officer Wierszewski.		7 to render an opinion as it relates to the City of Grosse	
8 Turns on light and instructs defendant to watch light.		8 Pointe Farms?	
9 Tests done improperly. 33. Doing large circles. Three		9 MR. RADNER: I'm going to object that	
10 eye crosses. Four circles. 11 horizontal deviations.		10 it calls for a legal conclusion but if you can	
11 Extended max D beyond three seconds.		11 answer that question.	
12 Is any of that critical of the		12 A. I don't know what you're asking.	
13 administration of the test?		13 Q. Early on in the deposition, Mr. Bugbee, I	
14 A. That's consistent with my observation that		14 asked if you were going to render opinions critical of	
15 mixing the lack of convergence with the HGN could fatigue		15 Officer Wierszewski and the City of Grosse Pointe Farms.	
16 the eyes. It was never my practice to do that many		16 And my recollection is that you indicated an affirmative	
17 movements. Typically I would do it in three or four		17 response to both of those questions.	
18 quick movements.		18 In so much as you have just indicated to	
19 Q. I'm just trying to figure out what that		19 me that you have no other opinions related to Officer	
20 refers to when obviously that refers to your very first		20 Wierszewski, other than you believe he did not have probable	
21 criticism of the mixing of the two tests. Correct?		21 cause to arrest Mr. Thibault, I'm now moving to the City of	
22 A. That is documentation of the mixing of the		22 Grosse Pointe Farms to ascertain what opinions if any you	
23 two tests.		23 will be asserting before the Jury if allowed to do so in	
24 Q. Are you critical of any of the three		24 this matter?	
25 standardized field sobriety tests that we have already		25 A. I clearly misunderstood the scope of that	
BUGBEE	Page 74	BUGBEE	Page 76
1 talked about that we haven't already discussed?		1 question. No, I don't have any criticisms against the	
2 A. Am I critical?		2 City of Grosse Pointe Farms. I would like to correct	
3 Q. Any other criticisms I guess is what I'm		3 that prior statement. No, I do not have criticisms.	
4 asking you other than what we have already discussed?		4 Q. You know what, I'm going to let you do that.	
5 A. I don't have criticisms other than I don't		5 Any other materials that you were kind enough to bring	
6 believe they rose to the level of probable cause for an		6 that we haven't already marked?	
7 arrest in and of themselves.		7 A. I have got my training certificates.	
8 Q. With respect to the performance of Officer		8 Q. Let's mark those. Are those copies that you	
9 Wierszewski, as it relates to his arrest, am I correct		9 made for me?	
10 that your opinion is that he had no probable cause to		10 A. These are copies of my training certificates.	
11 arrest him for OWI?		11 Q. Okay.	
12 A. Correct.		12 (Deposition Exhibit No. 9 marked for	
13 Q. Any other opinions that you are going to		13 identification.)	
14 render against Officer Wierszewski in this case?		14 Q. Are you prepared to render any opinions in	
15 MR. RADNER: I'm going to object to		15 this matter against Officer Wierszewski related in any	
16 the form of that question.		16 fashion whatsoever to the dismissal of the misdemeanor	
17 You can answer it if you understood		17 charges brought against him in January of 2015?	
18 it.		18 MR. RADNER: I'm going to object to	
19 A. I have no criticisms toward Officer		19 that because I'm not sure I understand that	
20 Wierszewski, other than he seemed to have ignored the		20 question.	
21 evidence that he was developing to make his arrest		21 A. I don't understand.	
22 decision.		22 MR. DEGROOD: Would you read it back	
23 Q. Can you answer my question?		23 again?	
24 A. No.		24 (Record repeated.)	
25 Q. Okay.		25 A. Was Wierszewski charged.	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 77	BUGBEE	Page 79
1 Q. No. Perhaps I misspoke. Are you in any 2 position to render any opinions against Officer 3 Wierszewski with respect to the dismissal of the 4 misdemeanor charges brought against Mr. Thibault which 5 were dismissed in January of 2015?		1 A. Correct. 2 Q. It was not a violation of any of Mr. 3 Thibault's rights on 12-5-14 when Officer Wierszewski 4 asked him if he was suffering from any medical issues?	
6 A. No. 7 Q. Am I correct that you have no knowledge one 8 way or the other with respect to what role if any Officer 9 Wierszewski had in the dismissal of the misdemeanor 10 charges?		5 A. Correct. 6 Q. Would you also agree that it was not a 7 violation of Mr. Thibault's rights when Officer 8 Wierszewski asked him at what time he had started driving 9 that evening?	
11 A. You're correct. 12 MR. DEGROOD: Let's go off the 13 record. 14 (Brief recess.)		10 A. Correct. 11 Q. Would you also agree that it was not a 12 violation of Mr. Thibault's rights when Officer 13 Wierszewski asked him to explain what had happened with 14 respect to his vehicle coming into contact with the 15 island median?	
15 Q. Mr. Bugbee, are you at this point in time 16 rendering any opinion related to Officer Wierszewski 17 concerning the claims of malicious prosecution being made 18 against him?		16 A. Correct. 17 Q. Would you agree that it was not a violation 18 of Mr. Thibault's rights for Officer Wierszewski to ask 19 him if he had had anything to drink that evening?	
19 A. No. 20 Q. I think you have already indicated that you 21 have no opinions related to the City of Grosse Pointe 22 Farms, correct?		20 A. Correct. 21 Q. Would you also agree that it was not a 22 violation of Mr. Thibault's rights for Officer 23 Wierszewski to ask Mr. Thibault to participate in the 24 standard field sobriety test and field sobriety test that 25 evening?	
23 A. Correct. 24 MR. RADNER: Subject to my objection 25 to that question.			
BUGBEE	Page 78	BUGBEE	Page 80
1 Q. Have you at any point in time been provided 2 with a copy of the actual Complaint filed in United 3 States District Court against my clients?		1 A. Correct. 2 Q. Would you agree that it was not a violation 3 of Mr. Thibault's rights for Officer Wierszewski to frisk 4 him the evening he was stopped on 12-5 --	
4 A. Yes. 5 Q. Would you agree with the statement: That 6 every arrest of a citizen by a law enforcement officer 7 requires a judgment call be made on behalf of the 8 arresting law enforcement officer?		5 A. Correct. 6 Q. -- '14. 7 A. Correct. 8 Q. And would you agree that Mr. Thibault 9 voluntarily consented to allow the officers to search his 10 semi tractor the evening of 12-5 --	
9 A. Yes. 10 MR. RADNER: What do we want a copy 11 of here? 12 (Brief recess.)		11 MR. RADNER: I'm going to object to 12 that. 13 Q. -- '14.	
13 Q. Would you agree that at the time of this 14 particular stop by Officer Wierszewski that he was acting 15 in furtherance of a legitimate government function?		14 MR. RADNER: You can answer it if you 15 can. 16 A. I don't recall if a full and willing waiver 17 of that. I think he --	
16 A. Yes. 17 Q. As a retired Michigan State Police officer, 18 you would agree that there were no violations of Mr. 19 Thibault's rights related to the actual stop of him that 20 evening?		18 Q. Do you recall the question being asked of Mr. 19 Thibault? 20 A. I think it went something to the effect of: 21 You don't mind if I look in your car, do you?	
21 A. I would agree. 22 Q. It was not a violation of Mr. Thibault's 23 rights on 12-5-14 to ask for his CDL or commercial 24 driver's license, logbook, medical card or annual 25 inspection forms when he was stopped?		22 And Mr. Thibault said no. So I don't 23 know if that's a -- 24 Q. It was not inappropriate for Officer 25 Wierszewski to ask Mr. Thibault, prior to the	

Alan Thibault v.
Edward WierszewskiMarty Bugbee
February 23, 2016

BUGBEE	Page 81	BUGBEE	Page 83
1 administration of any standard field sobriety test or 2 field sobriety test, whether he, Mr. Thibault, had any 3 problems or difficulties with standing, sitting or 4 walking? 5 A. No. 6 Q. Did you see any evidence in any of the 7 materials that were provided to you or procured by you 8 that demonstrate Mr. Thibault ever telling Officer 9 Wierszewski or any other officers who came into contact 10 with him on December 5th, 2014, that he, Mr. Thibault, 11 had a speech impediment? 12 A. No. He did say he is slow though at one 13 point. I don't know what that means. 14 Q. He also indicated in response to questions 15 that he did not have any physical problems and was not 16 under a doctor's care, correct? 17 A. Yes. He at one point said he was receiving 18 doctor's care from V.A. That was never pursued. 19 Q. Where was that? You can refer to your notes. 20 (Brief recess.) 21 MR. DEGROOD: Back on the record. 22 Q. In case Mr. Bugbee has a response to the last 23 question. 24 MR. RADNER: Please identify which 25 page number of Exhibit 7 you are looking at.	1 A. Well, from my observations I believe that the 2 amount of tests given and the repetitive tests was very 3 excessive. I tested for navy pilot and I took the 4 physical and I didn't go through this much to do that. 5 So I think it was rather excessive and I 6 think that Officer Wierszewski ignored the evidence that he 7 collected all along the way to make his decision. It just 8 appeared to be a results based investigation. 9 Q. You didn't perform any physical exams on any 10 Air Force pilot, did you? 11 A. I was an Air Force OSI agent. 12 Q. Pardon me? 13 A. I was an Air Force OSI agent. We weren't 14 allowed to do that. 15 Q. What are you referring to when you just said: 16 I gave the test to a pilot? 17 A. No. I said I took the test for Navy pilot. 18 Q. All right. 19 A. And I went through quite extensive flight 20 physicals and stuff. I was flabbergasted by how much he 21 was putting this person through to try to get a positive 22 result. 23 Q. You mean to tell me, to get a seat in one of 24 the United States Navy's aircraft you go through less 25 than two to three hours testing overall?		
BUGBEE	Page 82	BUGBEE	Page 84
1 A. I will do that. When he was being given the 2 blood pressure test -- let's see. I'm sorry. I can't 3 find exactly where it said but when he was given the 4 blood pressure test he said something to the effect of: 5 I have this done once a month. But right now I can't 6 find it in here. 7 Q. All right. In your experience is there any 8 margin of error related to the standard field sobriety 9 tests? 10 A. If there is I wouldn't know what it is. 11 Q. Would you know if it, that margin of error, 12 is any different for a, quote, war combat veteran, 13 unquote? 14 A. I wouldn't know that. 15 Q. Have you ever heard that at any time in your 16 experience? 17 A. I have never heard that. 18 Q. Because I'm winding down, I'm going to ask 19 one more time. Any other opinions that you will be 20 rendering that are critical -- and by critical I mean 21 demonstrative of a deviation from the standards expected 22 of a reasonable and prudent public safety officer as they 23 existed on December 5th, 2014, under the circumstances of 24 this case related to Officer Wierszewski that we have not 25 already covered?	1 A. I don't recall officially what was contained 2 in the test and what -- how long the duration was. 3 Q. How old were you? 4 A. I was 19. 5 Q. Were you a member of the United States Navy? 6 A. I was a Midshipman at University of Michigan. 7 Q. So you were on the ROTC program? 8 A. I was in the Naval ROTC program. 9 Q. Upon graduation did you serve in the Navy? 10 A. No. Upon graduation I -- actually I 11 entered -- prior to graduation I entered the Air National 12 Guard. I went from there to the Air Force Reserves where 13 I was a Air Force Offices Special Investigations, Special 14 Agent and reserve status. 15 Q. Do you receive a pension from the Reserves? 16 A. No. 17 Q. Are you still a reservist? 18 A. No. 19 Q. When is the last time you participated as an 20 Air Force reservist? 21 A. I retired from the Air Force Reserve in 2010, 22 20 years. And I will begin to receive a pension at the 23 age of 59. 24 MR. DEGROOD: Thank you. I have 25 nothing further.		

Alan Thibault v.
Edward Wierszewski

Marty Bugbee
February 23, 2016

BUGBEE	Page 85	BUGBEE	Page 87
1	MR. RADNER: Two questions.	1	you would administer these field sobriety tests?
2	E X A M I N A T I O N	2	A. Oh, I would pursue whether or not they have
3	BY MR. RADNER:	3	been subject to any kind of a concussion from loud
4	Q. Can you please turn to page 14 of Exhibit 7.	4	explosions or gun fire. I would be concerned about their
5	And please tell me if that refreshes your recollection as	5	inner ear and the condition of it. Balance tests are all
6	to where in Exhibit 7 and where in the video there is	6	about the inner ear's capability to balance the body.
7	discussion of treatment at a VA.	7	MR. RADNER: Nothing further.
8	A. Okay. Yes.	8	MR. DEGROOD: Thank you, sir.
9	MR. DEGROOD: What page are we on?	9	(Deposition concluded at 1:10 p.m.)
10	A. That's on page No. 14. At 2:47 and 05	10	* * *
11	seconds Officer Wierszewski asked him: Do you have any	11	
12	physical defects?	12	
13	Mr. Thibault responds, quote: A little	13	
14	slow.	14	
15	There's no pursuit of that by Officer	15	
16	Wierszewski.	16	
17	He goes on to the next question: Are	17	
18	you under the care of a doctor or dentist is what	18	
19	Wierszewski asked next.	19	
20	Thibault answers: VA.	20	
21	Still no pursuit of what for or	21	
22	anything.	22	
23	Q. One last question. If you can turn to page	23	
24	No. 11. This is just for reference. There was something	24	
25	that you said to me about: Inner air 92 bravo infantry.	25	
BUGBEE	Page 86	BUGBEE	Page 88
1	Something about that that you thought peaked your	1	CERTIFICATE OF NOTARY PUBLIC
2	interest.	2	State of Michigan)
3	Can you explain that, please.	3	County of Oakland) ss.
4	A. During conversation with 92 bravo, there was	4	I, the undersigned, do hereby certify that the
5	at 2:12:55, an unknown officer asked: What's your MOS.	5	witness, whose attached testimony was taken before me in
6	Mr. Wierszewski or -- excuse me -- Mr. Thibault says,	6	the above-entitled matter, was by me first duly sworn to
7	quote: 92 bravo, which I believe is a combat position.	7	to testify to the truth; that the testimony contained
8	When he is engaged in conversation,	8	herein was by me reduced to writing in the presence
9	again later in the booking room, he tells another -- or I	9	of the witness by means of stenography; afterwards
10	think it was Veronica. I think that's Officer Cashion --	10	transcribed; and that this is a true and complete
11	that he was in infantry in the military. She engaged him in	11	transcript of the testimony given by the witness.
12	cordial conversation.	12	I do further certify that I am not
13	This was at 3:53 and 30 seconds Veronica	13	connected by blood or marriage with any of the parties;
14	takes his fingerprints. He is very cooperative. Follows	14	their attorneys or agents; that I am not an employee
15	instructions. He is coordinated. Steady stance. No	15	of either of them; and that I am not interested, directly
16	assistance needed standing. Veronica engages Mr. Thibault	16	or indirectly, in the matter in controversy.
17	in conversation about his job and the military.	17	In witness whereof I have hereunto set my
18	I believe at that point is when he tells	18	hand.
19	her he was in the infantry. This is -- what I have got	19	<i>Nikki Hatz Sinta</i>
20	written down here is a summary of the situation and not	20	
21	direct quotes because the conversation went on for a bit.	21	Nikki Hatz Sinta, CSR-2377
22	He talks about his trucking job. He talks about the	22	Certified Shorthand Reporter
23	military. Says he's in infantry. All the time very cordial	23	Notary Public, Oakland County
24	and polite.	24	My Commission Expires: 12-09-19
25	Q. Is there any significance to that with how	25	